

**STATE OF LOUISIANA**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:**

**ZELDEN PHYSICAL THERAPY, INC.**

**PROCEEDINGS UNDER THE LOUISIANA  
ENVIRONMENTAL QUALITY ACT  
LA. R.S. 30:2001, ET SEQ.**

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**Enforcement Tracking No.  
WE-P-03-0150**

**Agency Interest Number  
44012**

**SETTLEMENT AGREEMENT**

The following Settlement is hereby agreed to between Zelden Physical Therapy (“Respondent”) and the Department of Environmental Quality (“DEQ” or “the Department”), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. (“the Act”).

**I.**

Respondent is a corporation which owns and/or operates a sewage treatment facility at 19345 Sunshine Street in Covington, St. Tammany Parish, Louisiana (“the Facility”).

**II.**

On June 9, 2003, the Department issued a Penalty Assessment, Enforcement Number WE-P-03-0150, in the amount of Four Thousand Forty Eight and 51/100 Dollars (\$4,048.51) to Respondent, which was based upon the following findings of fact:

The Respondent was granted coverage under Louisiana Pollutant Discharge Elimination System (LPDES) General Permit LAG530000 on or about July 7, 1998, and was specifically assigned permit number LAG530777. Under the terms and conditions of LPDES Permit LAG530777, the Respondent is authorized to discharge treated sanitary wastewater to local drainage, thence into the Abita River, both waters of the state.

An inspection conducted by the Department on or about June 7, 2001, and a subsequent file review conducted on or about February 27, 2002, revealed that the Respondent failed to submit Discharge Monitoring Reports (DMRs) as required by LPDES permit LAG530777 for the monitoring periods of 1998, 1999, and 2000. Each failure to submit DMRs is a violation of LPDES permit LAG530777 (Part I, Section C.6, and Part III, Sections A.2 and D.4) La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, LAC 33:IX.2355.L.4, and LAC 33:IX.2767.A.5.

An inspection conducted by the Department on or about June 7, 2001, and a subsequent file review conducted on or about February 27, 2002, revealed the Respondent was not sampling its effluent as required by LPDES permit LAG530777. Specifically, the Respondent failed to conduct sampling for the monitoring periods of 1998, 1999, and 2000. Each failure to sample the effluent is a violation of LPDES permit LAG530777 (Part I, Section B; Part III, Sections A.2. and C.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2767.A.5.

The Respondent was issued Warning Letter WE-L-01-0182 on or about December 13, 2001, for areas of concern noted during the inspection by the Department on or about June 7, 2001. The warning letter stated that the Respondent should take any and all steps to ensure compliance with all environmental regulations at the facility.

The Respondent was issued Consolidated Compliance Order & Notice Of Potential Penalty (CONOPP), Enforcement Number WE-CN-01-0182 on or about March 13, 2002, for failing to maintain records (Discharge Monitoring Reports/laboratory data) on-site, failing to submit Discharge Monitoring Reports, and failing to sample the effluent from the sewage treatment facility.

The Compliance Order portion of the Order required the Respondent:

- 1) to immediately take any and all steps necessary to achieve and maintain compliance

with permit limitations and conditions contained in LPDES permit LAG530777;

- 2) to submit properly completed DMRs to the Enforcement Division for the monitoring periods 1998 through 2001 (the Respondent was also ordered to submit a letter identifying any monitoring period for which no sampling was performed); and
- 3) to submit a written report to include the circumstances of the cited violations.

Consolidated Compliance Order & Notice Of Potential Penalty WE-CN-01-0182 is a final action of the Department and is not subject to further administrative review.

On or about March 25, 2002, the Respondent submitted a written response to Consolidated Compliance Order & Notice Of Potential Penalty (CONOPP), Enforcement Number WE-CN-01-0182. In the letter, the Respondent stated that sampling had been performed for the 2001 reporting period. The Respondent stated that no sampling was performed for the 1998, 1999, or 2000 reporting periods. The Respondent submitted a completed DMR for the 2001 reporting period and blank DMRs for the 1998, 1999, and 2000 reporting periods.

### III.

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

### IV.

The Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of Two Thousand Five Hundred And 00/100 Dollars (\$2,500.00), of which \$157.51 represents DEQ's enforcement costs, in settlement of the claims set forth in this agreement.

### V.

The total amount of money expended by Respondent on cash payments to DEQ, as

described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

## VI.

Respondent further agrees that the Department may consider the inspection report(s), the Consolidated Compliance Order & Notice Of Potential Penalty (CONOPP), the Penalty Assessment, and this Settlement Agreement, for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action the Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

## VII.

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement.

## VIII.

This Settlement Agreement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act.

## IX.

The Respondent has caused a public notice advertisement to be placed in the official journal of

the parish governing authority in St. Tammany Parish. The advertisement, in form, wording, and size approved by the Department, announced the availability of this Settlement Agreement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement Agreement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

X.

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this agreement is voidable at the option of the Department.

Penalties are to be made payable to the Department of Environmental Quality and mailed to the attention of Darryl Serio, Department of Environmental Quality, Office of Management and Finance, Financial Services Division, , Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303.

XI.

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XII.

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

WITNESSES:

Dawn M. Pittman

RESPONDENT

BY:

(Signature)

GREGORY S ZELDEN  
(Printed)

Sandra S. Wallace

TITLE: PRESIDENT

THUS DONE AND SIGNED in duplicate original before me this 11th day of

September, 20 03, in Covington, Louisiana.

Donald P. A.

NOTARY PUBLIC

WITNESSES:

R. W. Bue

R. Bruce Hammatt

STATE OF LOUISIANA

Hall Bohlinger, Secretary

Department of Environmental Quality

BY:

R. Bruce Hammatt

R. Bruce Hammatt, Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 10th day of

December, 20 03, in Baton Rouge, Louisiana.

[Signature]  
NOTARY PUBLIC

Approved:

R. Bruce Hammatt

R. Bruce Hammatt, Assistant Secretary  
Office of Environmental Compliance

STATE OF LOUISIANA

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This has been reviewed, and is concurred in, by the Attorney General, under the provisions of La. R.S. 30:2050.7.

RICHARD P. IEYOUB  
ATTORNEY GENERAL

DATED: 12-3-03

BY: 

ASSISTANT ATTORNEY GENERAL